IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 47 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DINESHCHANDRA NANAKCHANDRA MISHRA

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner

Mr. S.P.Hasurkar, GOVERNMENT Solicitor for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 11/04/2001

CAV JUDGEMENT

By means of this Revision Application, the petitioner has sought for quashing and setting aside the order dated 19th January, 2000 passed by the learned

Assistant Judge, Vadodara in Civil Miscellaneous Appeal No. 448 of 1999 arising out of the proceedings of Regular Civil Suit no. 1622 of 1999 pending before the 7th Joint Civil Judge (S.D.), Vadodara.

2. The petitioner filed Regular Civil suit no.1622 of 1999 for a declaration and permanent injunction alongiwth an application exh. 5 for interim injunction against the respondents from implementing the transfer order dated 26th October, 1999 and further restraining the respondents from making out any type of obstruction in doing the job of the petitioner as Police Inspector, PCB Branch, Ahmedabad. The petitioner was working as Police Inspector and was transferred to Crime Branch at Ahmedabad by an order dated 26th October, 1999. He challenged that order in the Civil Court (S.D.), Vadodara by way of filing Regular Civil suit 1622 of 1999 on the ground of malafides,illegal and improper and in violation of principles of natural justice. According to the case of the petitioner, he was working as a Police Inspector of P.C.B. branch. He received one message between 6.00 p.m. to 7.00 p.m. from the control room to rush to Fatehganj police station regarding some controversy which had arisen because of gambling. A mob of members of B.J.P. and of the locality rushed to the police station. The petitioner therefore, rushed at the place where he was required and he saw a huge crowd, losing its patience and the mob was running right towards the police station. The defendant no.1 asked the mob to go out of police station and behave properly. The defendant no.1 wanted the mob to take action against the mob under section 186 of Indian Penal Code. One Pradip Joshi and Hasmukhbhai Patel were leading the mob and he ignored the instructions of the police. Then the defendant no.1 instructed all his subordinates to remove the mob from the police station. At the relevant time, the Additional Commissioner Police was also present at the scene of occurrence. The petitioner was asked to control the mob. Hence, Lathicharge was required to be ordered. The corporators Pradip Joshi and Hasmukh Patel were shouting slogans against the petitioner-plaintiff and the Additional Commissioner of Police Ms. Geeta Johri- " Hi- Hi". The Corporator Pradip Joshi said that he would see to it that the petitioner is removed from Vadodara and get him placed under suspension. The petitioner was initially posted at Fatehganj police station. The corporator Pradip Joshi asked the petitioner to release Sakha Pandit Tukaram as a false case had been filed against him. The petitioner was threatened for transfer if Sakha Pandit Tukaram is not released. As such, the order of transfer was malafide

and was made at the instance of Pradip Joshi and other BJP workers.

3. The learned trial Judge framed three issues as under:

(1) Whether the plaintiff proves prima facie case in his favour ?
(2) Whether balance of convenience is in favour of the plaintiff ?
(3) Whether the plaintiff will suffer irreparable loss, if the order is vacated or not made absolute ?

4. The learned trial Judge, after going through the material on record, came to the conclusion that the petitioner-plaintiff has proved prima facie case in his favour and balance of convenience was also in his favour and the petitioner-plaintiff would suffer an irreparable loss if the ad-interim order is vacated or not made absolute. In the result, the application exh. 5 was allowed and the ad-interim relief granted by the order dated 29th October, 1999 was made absolute till the final disposal of the suit vide order dated 5th November, 1999.

5. Being aggrieved by the said order of the learned trial Judge, the present respondents-original defendants filed Civil Miscellaneous Appeal No. 448 of 1999 before the District Court, Vadodara. The learned Assistant Judge, Vadodara by his judgment dated 19.1.2000 allowed the said appeal and set aside the order of the trial court holding that the trial court has erred in holding that the petitioner-plaintiff had made out a prima facie case for interim injunction. He also held that the trial court has also erred in holding that the petitioner-plaintiff would suffer an irreparable loss or injury and would be put to inconvenience if the injunction is refused and the order of the trial court was also illegal and untenable otherwise.

6. Therefore, being aggrieved by the said judgment and order dated 19.1.2001 in Civil Miscellaneous Appeal no. 448 of 1999 passed by the learned Assistant Judge, Vadodara, the petitioner-original plaintiff has filed the present Revision Application.

7. I have heard the learned counsel for the parties and perused the relevant record. I have carefully considered the arguments of the learned counsel for rival parties. It is evidence from the record that

the Corporator Pradip Joshi who was the corporator had given a threat to the petitioner on 2.4.98 when the petitioner was at the police station where the incident took place that if the person concerned is not released. The petitioner has made an entry in the general diary in that respect. The mob incident took place on 23rd October, 1999 when the petitioner was posted at the different police station, but he was called to control the mob. Hence, he reached there. In case the petitioner would not have ordered to disperse the mob from the police station premises, an untoward incident was likely to happen as at that time, Ms. Geeta Johri was present in the police force. The petitioner's transfer was expected in both the situations if he had turned down the mob and dispersed by lathicharge in discharge of his duties. In case, he would not have been able to do so, he would have been charged for negligence in performance of his official duties. A complaint was made against police officers including the petitioner on 25th October, 1999 and the impugned order of transfer was passed on 26th October, 1999. The lower appellate court has erroneously presumed that the petitioner was not able to make out a prima facie case. From the facts and circusmtances of the case, it is obvious that the corporator had already given threats on 2.4.98 when the petitioner was working as a Police Inspector at the police station and the mob incident took place on 23.10.99 and that mob was led by BJP corporators Pradip Joshi and Hasmukh Patel. The impugned order was passed on 26th October, 1999. The police have not offered any satisfactory explanation to show what were the reasons for transferring the petitioner from one place to another by the impugned order dated 26th October, 1999 which was passed within three days of the mob incident at the police station wherein, in order to save the property of the police station and save the life of the Additional Commissioner of Police Ms. Geeta Johri, had to order Lathicharge for dispersing the mob. No doubt, the transfer order can be passed on mere allegations. But in the present case, there is a prima facie case to show that the transfer has been passed only on the ground that some complaint was made against the police officers by Pradip Joshi and Hasmukh Patel on 25.10.99 and the transfer order can be passed in exigency of service and in the public interest even in mid-term. Thus, the lower appellate court has erred in holding that the petitioner could not make out a prima facie case for interim injunction. The appellate court has held that by allowing the interim relief application, the trial court has allowed the whole suit itself at the preliminary stage. In my view, the trial court is required to

observe and follow well established principles governing grant or refusal of the interim injunction. The petitioner has been transferred from one place to another, but there was no irreparable loss as that order does not amount to penalty or victimisation at all. Even if it is assumed that the petitioner was to suffer an inconvenience due to the impugned order of transfer, that would be a very ordinary inconvenience and he has no vested right to work at a particular place. The trial court is expected not to interfere in the administration unless great hardship is likely to be caused to the person concerned. In the present case, the petitioner has been transferred from one police to another. It cannot be said that great hardship is likely to be caused to the petitioner by this transfer. In the fact and circusmtances of the case, though some of the findings of the lower appellate court are illegal, still however, I do not think it proper to interfere with the findings recorded by the lower appellate court. This Revision Application therefore, deserves to be dismissed and is accordingly hereby dismissed. Rule is dischaged with no order as to costs. Interim relief, if any, stands vacated forthwith. However, The respondents are at liberty to pass appropriate orders regarding transfer of the petitioner in due course.

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